IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5401 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARUNBHAI SOMABHAI CHAVDA

Versus

LAXMI CINEMA

Appearance:

1. Special Civil Application No. 5401 of 1993

MR AM RAVAL for Petitioner No. 1

NOTICE UNSERVED for Respondent No. 1

MR ND GOHIL ASSTT GOVERNMENT PLEADER for Respondent No. 2

NOTICE SERVED for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 01/09/2003

ORAL JUDGEMENT

1. Heard learned advocate Ms.Jesal Zaveri for

learned advocate Mr.Anil M. Rawal on behalf of the petitioner and learned AGP Mr.N.D.Gohil for respondent Nos.2, 3 & 4. The respondent no.1 remained unserved with remarks that the office is already closed.

2. Learned advocate Ms.Zaveri for the petitioner has requested this Court to adjourned this matter as the respondent No.1 has remained unserved. The second ground to claim adjournment is that the learned advocate for the petitioner does not have complete papers of the matter. However, this Court is reluctant to accede to the request made by the learned advocate Ms.Zaveri to adjourn the matter in view of the fact that this is very old matter pertaining to the year 1993, wherein, Rule came to be issued by this Court on 7th June, 1993 and the respondent No.1 - Laxmi Cinema which is already closed since long and therefore, remained unserved but as such, no steps have been taken by the petitioner to serve the respondent No.1 during last ten years period and this being the negative and lethargic attitude on the part of the petitioner, this Court is not inclined to adjourn this matter on that count. Secondly, the learned advocate does hot possess the complete papers is also not the valid reason to claim for adjournment as the matter is listed after ten years for final hearing and this Court fails to understand as to why this fact has not come to the notice of the learned advocate for the petitioner for these many years and today asking for adjournment on the ground of non availability of the complete papers, is, atleast not fair on the part of the learned advocate for the petitioner. Therefore, considering the facts and circumstances of the case and the fact that the respondent No.1 Cinema is closed down, even in above background also, this Court is inclined to proceed with the matter is and same is dealt with as under :

3. The facts of this case show that the petitioner workman had challenged the termination order before the Labour Court. Initially, the labour court has passed the order exparte against the respondent No.1. The labour court has granted reinstatement with continuity of service with full backwages by order dated 13th June, 1993. Thereafter, Misc. Application No.219 / 1990 has been filed by the respondent No.1 against the exparte award passed by the labour court and in the said application, matter has been settled between the parties on 11th May, 1993 and copy of the said settlement is also produced on the record where in all, a sum of Rs.18,000/- has been paid to the petitioner workman, which is confirmed by putting the signatures of the workman and the Union's representative. Therefore, once the matter

has been settled and thereafter on 13th May, 1993 one application has been submitted by the petitioner before the labour court in Reference No.475 / 1992 but the grievance is that no order has been passed by the labour court on the said application dated 13th May, 1993. It may be appreciated that the matter has been settled between the parties viz. the petitioner and the respondent no.1 while granting him all the benefits of retrenchment compensation, gratuity and the remaining unpaid salaries and the same is confirmed under the signature of the respondent No.1. Not only that but one Arunbhai Somabhai has also signed the said settlement and Advocates for the both the respective parties have also signed the same. It is also necessary to note that the said settlement has been produced in Misc. Application No.219 / 1990 but unfortunately, the petitioner has not produced any order which has been passed by the labour court accepting the said settlement in Misc. Application No.219 / 1990.

4. Therefore, according to my opinion, once the matter is already settled between the parties and the settlement is executed in the writing under the signatures of all the respective parties and no order has been produced by the petitioner and what happened to said misc. application submitted by the respondent No.1, in light of this fact, challenge to said settlement and what order was passed is not produced, this Court is not able to examine the legality and validity of the order and hence, there is no substance in the present petition and the same is rejected accordingly.

Rule discharged with no order as to costs.

Date : 1.9.2003 [H.K.Rathod, J.]

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